## BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION ASSESSMENT APPEALS COMMISSION

Appeal of:	HOMELIFE OXYGEN, LLC	)
	Personalty Account No. P-131824	) Shelby
	Commercial Property	) County
	Tax Year 2001	)

## FINAL DECISION AND ORDER

## Statement of the case

This is an appeal by the taxpayer from the initial decision and order of the administrative judge<sup>1</sup>, who determined that the taxpayer's appeal from a back assessment was untimely and must be dismissed for lack of jurisdiction. The assessment at issue before the administrative judge was as follows:

<u>Value</u> <u>Assessment</u> \$242,700 \$72,810

The appeal was heard in Memphis on June 21, 2005, before Commission members

Stokes (presiding), Brooks, Gilliam, Kyles, and Wade. Mr. Brian McCuller represented
the taxpayer and Assistant County Attorney Thomas Williams represented the assessor.

<u>Findings of fact and conclusions of law</u>

The taxpayer duly filed its tangible personal property reporting schedule for tax year 2001 but was later audited and determined by the assessor to have been underassessed. The basis of the underassessment was that the taxpayer should have revised the reported cost of its tangible personal property to reflect a technical "step-up" in the depreciable basis of its property for federal income tax purposes following a partner buy-out in 1999. The administrative judge found no legal basis for a back assessment or reassessment on these facts but determined *sua sponte* that the State Board of Equalization lacked jurisdiction to hear the appeal because the taxpayer did not appeal the back assessment within the sixty days required by law. Tenn. Code Ann. §67-1-1005(b)

The taxpayer argued to the Commission that jurisdiction was waived by the failure of the assessor to object at the initial hearing before the administrative judge. In the alternative, the taxpayer requested the Board to take equitable jurisdiction. For the reasons expressed by the administrative judge in his initial decision and order, we find the parties cannot waive or confer jurisdiction, that the appeal was indeed filed late under established rules for calculation of time, and that the Board does not have

<sup>&</sup>lt;sup>1</sup> An administrative judge appointed by the State Board of Equalization conducts the initial hearing of property tax appeals and renders an initial decision and order reviewable by this Commission. Before the Commission, an administrative judge other than the judge who heard the matter initially, sits with the Commission but does not take part in any factual determination.

equitable power to ignore the deadlines to appeal. The Board has been advised of the general principles regarding its jurisdiction in an opinion of the state Attorney General (OAG 92-62).

## **ORDER**

It is therefore ORDERED, that the initial decision and order of the administrative judge is affirmed on the issue of jurisdiction and the appeal is dismissed. This order is subject to:

- Reconsideration by the Commission, in the Commission's discretion.
   Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
- Review by the State Board of Equalization, in the Board's discretion. This review
  must be requested in writing, state specific grounds for relief, and be filed with the
  Executive Secretary of the State Board within fifteen (15) days from the date of this
  order.
- Review by the Chancery Court of Davidson County or the county where the property is located. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.
   Requests for stay of effectiveness will not be accepted.

DATED: Jeb. 7, 2006

ATTEST:

CC:

eculive Secretary

Mr. Brian McCuller, Thompson Dunavant PLC

Thomas Williams, Esq. Rita Clark, Assessor